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IN THE HIGH COURT OF JUDICATURE AT JABALPUR : M.P.

Criminal Appeal No. 556 /98

APPELLANT : Anil Mishra, son of Brahmadeo Mishra, aged about 28 years, Student, resident of Namana Kalan, Ambikapur, P.S.Ambikapur, District Sarguja, (M.P.)
In jail.

3892
Filed on 2.3.98
by Shri Ashok Agrawal
Advocate
Rte. A.R.

Vs.

RESPONDENT : State of M.P.

CRIMINAL APPEAL UNDER SECTION 374(2) OF THE CODE OF CRIMINAL PROCEDURE.

A.F.R.

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.556/1998

Anil Mishra

- Versus -

State of Madhya Pradesh (now Chhattisgarh)

Criminal Appeal No.818/1998

Vinay Singh

- Versus -

State of Madhya Pradesh (now Chhattisgarh)

JUDGMENT FOR CONSIDERATION

Sd/-
L.C.BHADOO
Judge
11-9-2006

HON'BLE MR. JUSTICE V.K. SHRIVASTAVA

Agreed

Sd/-
V.K. Shrivatava
Judge

POST FOR JUDGMENT ON 15TH SEPTEMBER, 2006

Sd/-
L.C.BHADOO
Judge
14-9-2006

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.556/1998

Anil Mishra

- Versus -

State of Madhya Pradesh (now Chhattisgarh)

Criminal Appeal No.818/1998

Vinay Singh

- Versus -

State of Madhya Pradesh (now Chhattisgarh)

Present: -

Mr. Govind Ram Mirri, Adv. with Mr. Ratan Pusty, Adv.:		For appellant in Cr. Appeal No.556/1998.
Mr. M.K. Baig, Advocate	:	For appellant in Cr. Appeal No.818/1998
Mr. U.N.S. Deo, Addl. Public Prosecutor with Mr. D.K. Gwalre, Dy. Govt. Advocate	:	For the State/respondent.

DIVISION BENCH: -

HON'BLE MR. L.C. BHADOO AND

HON'BLE MR. V.K. SHRIVASTAVA, JJ.

J U D G M E N T

(Delivered on 15th September, 2006)

The following judgment of the Court was delivered by *L.C. Bhadoo, J.*:-

1. Criminal Appeal No.556/98 filed by appellant Anil Mishra and Criminal Appeal No.818/98 filed by appellant Vinay Singh are being disposed of by this common judgment, as both these appeals are arising out of the same judgment passed in Sessions Trial No.418/95 relating to the same incident.

2. These appeals are directed against the judgment of conviction and order of sentence dated 3rd February, 1998 passed by learned 1st Additional Sessions Judge, Ambikapur, District

Sarguja in Sessions Trial No.418/95 whereby learned Additional Sessions Judge after holding the accused/appellants guilty for commission of offence under Sections 450 & 376 (2) (g) of the Indian Penal Code, sentenced each of the accused/appellant to undergo rigorous imprisonment for 10 years and life imprisonment respectively. Accused Vinay Singh was also convicted under Section 25 (1-b) (a) of the Indian Arms Act and sentenced to undergo R.I. for 3 years. Learned Additional Sessions Judge directed that all the sentences shall run concurrently.

3. The case of prosecution, in brief, is that in the night of 13.8.95 the prosecutrix along with her family members i.e. her husband, father-in-law and three daughters was sleeping in her house situated at Nehru Ward, Ambikapur. At about 23.30 hrs in the night the accused persons knocked the door for opening the same, but the prosecutrix did not open the door. However, after sometime her younger daughter wanted to answer the call of nature, therefore, when the prosecutrix opened the door in order to take her daughter outside the house for answering the call of nature, the accused persons forcibly entered the house and bolted the doors from inside. Accused persons caught hold of the prosecutrix by hairs and started assaulting her with fist. Accused Vinay Singh was in possession of a country made revolver and with that he assaulted the prosecutrix. When husband of prosecutrix tried to intervene, he was also assaulted. Accused Anil Mishra at the command of accused Vinay Singh took the prosecutrix in the courtyard and committed rape on her after throwing her down on the floor. Accused Vinay Singh took the elder daughter 'V' of prosecutrix in a room and committed rape on her. Thereafter, the accused persons forcibly took two daughters of prosecutrix with them, for the purpose of identification they are mentioned as 'V & S'. The accused persons committed rape on the elder daughter of prosecutrix 'V', firstly after a distance of about 100 yards under a tree and thereafter they took them to Village Gangapur and there in a

room accused persons again committed rape on "V". The prosecutrix immediately went to the Police Station Ambikapur in the night and lodged the report at 2.30 a.m., on which the Station House Officer registered FIR under Sections 450 & 376 (2)(g) of the IPC and took up the investigation. Husband of the prosecutrix was sent for medical examination, Dr. J.K. Jain (PW-1) examined the injuries and prepared the medical report (Ex.P-1). Doctor noticed three injuries on the person of the husband of prosecutrix i.e.

a. One lacerated wound on the posterior part of left parietal region of scalp measuring 3cm x 0.5cm x 0.5cm in "Y" shape.
b. One contusion in the size of 6cm x 4cm on the upper part of left arm.
c. One contusion in the size of 10cm x 2cm on the posterior aspect of the middle part & lower part of the right side of chest. Tenderness was present.

4. The prosecutrix was also sent for medical examination. Dr. Pratibha Rajul Jain (PW-2) examined the person of prosecutrix and prepared the report Ex.P-2. She noticed the following injuries;

a. An abrasion mark over left eyebrow on outer side of eyebrow in the size of 1cm x 0.5cm.
b. 3-4 small abrasions were present over left cheek in the size of 0.3cm x0.1cm.
c. Multiple abrasion marks over right side of neck, over right clavical & over right side of chest in the size of ½cm to 3 cm.

She was also examined in order to ascertain the commission of rape on her, however, the doctor opined that since there was old tag of rupture of hymen and the prosecutrix being a lady of about 40 years of age, she was habitual for intercourse. The Investigating Officer took into possession the Sari & Petticoat of the prosecutrix under Ex.P-5 and it was noticed that on Sari there were white and red colour spots and on the petticoat there were 4 spots of like human semen.

5. After usual investigation, charge sheet was filed against the accused/appellants in the Court of learned Chief Judicial Magistrate, Ambikapur, who in turn committed the case to learned Sessions Judge, Ambikapur from where learned 1st Additional Sessions Judge, Ambikapur received the case on transfer for trial. The prosecution in order to establish the charge against the accused/appellants examined 8 witnesses. On the other hand, learned Additional Sessions Judge recorded the statement of accused/appellants under Section 313 of the Cr.P.C. in which they denied the material appearing against them in the prosecution evidence and stated that they are innocent and have been falsely implicated in the crime.

6. Learned Additional Sessions Judge after hearing the arguments of learned counsel for respective parties, convicted & sentenced the accused/appellants in the manner as mentioned in Para-1 of this judgment.

7. We have heard Mr. Govind Ram Mirri with Mr. Ratan Pusty, learned counsel for appellant-Anil Mishra, Mr. Baig, learned counsel for accused-Vinay Singh and Mr. U.N.S. Deo, Addl. Public Prosecutor with Mr. D.K. Gwalre, Dy. G.A. on behalf of the State/respondent.

8. Learned counsel for the accused/appellants argued that as per cross-examination of the prosecutrix and her daughter 'S' PW-4, a person was residing in the neighbourhood and at some distance in the vicinity other persons were also residing but the Investigating Officer did not examine them, as no independent witness has been examined by the prosecution, therefore, conviction of the accused/appellants is bad in law. While drawing attention of the Court towards the cross-examination of the prosecutrix and her daughter, learned counsel argued that the prosecutrix and her daughters are women of easy virtue, as the prosecutrix earlier married with one Ramsevak and thereafter she deserted him and started living with the present person. The daughter 'S' of prosecutrix, who has been examined as PW-4, had

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left her house with one Ramkumar and she remained with him for few days. Therefore, their evidence cannot be believed and the accused persons have been falsely implicated in the crime. They further argued that the prosecutrix has stated that rape was committed on her after throwing her on the ground, whereas, no injury was found on the body of prosecutrix. There are contradictions between the evidence of prosecutrix (PW-3) and her daughter 'S' PW-4. They also invited attention of the Court towards some contradictions between the police statement and court evidence of the prosecutrix.

9. Having heard learned counsel for the accused/appellants, we have perused the evidence and records of the trial court. As far as the argument regarding non-examination of independent witness and without corroboration of the evidence of the prosecutrix by the independent witness, same cannot be relied upon is concerned, the law on this point is well settled by catena of judgments of the Hon'ble Apex Court that the victim of sexual assault cannot be treated as an accomplice, therefore, her evidence does not require corroboration from any other evidence including the evidence of a doctor and if in a given case even if the doctor who examined the victim does not find sign of rape, it is no ground to disbelieve the sole testimony of the prosecutrix. The prosecutrix is a competent witness as per provisions of Section 118, therefore, her evidence must receive the same weight as is attached to an injured in cases of physical violence and same degree of care and caution must attach in the evaluation of her evidence as in the case of an injured complainant or witness and no more. However, the Court must be conscious of the fact that it is dealing with the evidence of a person who is interested in the outcome of the charge levelled by her. If the Court keeps this factor in mind and feels satisfied that it can act on the evidence of the prosecutrix, there is no rule of law or practice incorporated in the Indian Evidence Act similar to illustration (b) to Section 114 which requires it to look

for corroboration. However, in a case, if for some reason the Court is hesitant to place implicit reliance on the testimony of the prosecutrix it may look for evidence, which may lend assurance to her testimony short of corroboration required in the case of an accomplice. The nature of evidence required to lend assurance to the testimony of the prosecutrix must necessarily depend on the facts and circumstances of each case. The conviction can be based on the sole testimony of the prosecutrix, if the evidence of the prosecutrix inspires confidence and does not suffer from any infirmity and untrustworthiness. When the totality of circumstances appearing on the record of the case discloses that the prosecutrix does not have strong motive to falsely involve the person charged, the Court should ordinarily have no hesitation in accepting her evidence. The Indian women has tendency to conceal such offence because it involves her prestige as well as prestige of her family. It is common knowledge that large number of criminal cases against women remains unreported to the police on account of fear that reporting a matter to the police not only damages the reputation of the prosecutrix, but shall destroy the whole reputation of her family in the eyes of society.

10. In the matter of **State of Maharashtra versus Chandraprakash Kewalchand Jain** reported in **AIR 1990 Supreme Court 658** the Hon'ble Apex Court held that:

> "A prosecutrix of sex-offence cannot be put on par with an accomplice. She is infact a victim of the crime. Ordinarily the evidence of a prosecutrix who does not lack understanding must be accepted. The degree of proof required must not be higher than is expected of an injured witness. Ordinarily the evidence of a prosecutrix must carry the same weight as is attached to an injured person who is a victim of violence, unless there are special circumstances, which call for greater caution, in which case it would

be safe to act on her testimony if there is independent evidence lending assurance to her accusation.

To insist on corroboration except in the rarest of rare cases is to equate a woman who is a victim of the lust of another with an accomplice to a crime and thereby insult womanhood. It would be adding insult to injury to tell a woman that her story of woe will not be believed unless it is corroborated in material particulars as in the case of an accomplice to a crime. Ours is a conservative society where it concerns sexual behaviour. Ours is not a permissive society as in some of the Western and European countries. Our standard of decency and morality in public life is not the same as in those countries. It is, however, unfortunate that respect for womanhood in our country is on the decline and cases of molestation and rape are steadily growing. An Indian woman is now required to suffer indignities in different forms, from lewd remarks to eve teasing, from molestation to rape. Decency and morality in public life can be promoted and protected only if the Courts deal strictly with those who violate the societal norms. The Court must also realize that ordinarily a woman, more so a young girl, will not stake her reputation by leveling a false charge concerning her chastity."

11. In the matter of **Madan Gopal Kakkad Vs. Naval Dubey reported in (1992) AIR SCW 1408** the Hon'ble Apex Court held that;

"lack of oral corroboration to that of a prosecutrix does not come in the way of a safe conviction being recorded provided the evidence of the victim does not suffer from any basic infirmity, and the 'probabilities factor' does not render it unworthy of credence, and

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that as a general rule, corroboration cannot be insisted upon, except from the medical evidence, where, having regard to the circumstances of the case, medical evidence can be expected to be forthcoming.

12. In the celebrated case of **State of Punjab Versus Gurmit Singh and others** reported in **AIR 1996 Supreme Court 1393** the Hon'ble Apex Court held that;

> "The testimony of victim in cases of sexual offences is vital and unless there are compelling reasons which necessitate looking for *corroboration* of her statement, the Courts should find no difficulty to act on the testimony of a victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. Seeking corroboration of her statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury. Why should the evidence of a girl or a woman who complains of rape or sexual molestation, be viewed with doubt, disbelief or suspicion? The Court while appreciating the evidence of a prosecutrix may look for some assurance of her statement to satisfy its judicial conscience, since she is a witness who is interested in the outcome of the charge levelled by her, but there is no requirement of law to insist upon corroboration of her statement to base conviction of an accused."

The Hon'ble Apex Court has also laid down how to appreciate the evidence of the prosecutrix as under:-

> "The Courts, therefore, shoulder a great responsibility while trying an accused on charges of rape. They must deal with such cases with utmost

sensitivity. The Courts should examine the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the statement of the prosecutrix, which are not of a fatal nature, to throw out an otherwise reliable prosecution case. If evidence of the prosecutrix inspires confidence, it must be relied upon without seeking corroboration of her statement in material particulars. If for some reason the Court finds it difficult to place implicit reliance on her testimony, it may look for evidence which may lend *assurance* to her testimony, short of corroboration required in the case of an accomplice. The testimony of the prosecutrix must be appreciated in the background of the entire case and the trial Court must be alive to its responsibility and be sensitive while dealing with cases involving sexual molestations.

13. In the matter of **Dilip & another Vs. State of M.P.** reported in **AIR 2001 SC 3049** the Hon'ble Apex Court held that:

"...the prosecutrix in a sexual offence is not an accomplice and there is no rule of law that her testimony cannot be acted upon and made basis of conviction unless corroborated in material particulars. However, the rule about the admissibility of corroboration should be present to the mind of the Judge. In the matter of State of **H.P. Vs. Gian Chand, (2001) SCC 71**, on a review of decisions of the Apex Court, it was held that conviction for an offence of rape can be based on the sole testimony of the prosecutrix corroborated by medical evidence and other circumstances such as the report of chemical examination etc., if the same is found to be natural, trustworthy and wroth being relied on. This Court further held; "If evidence of the prosecutrix inspires

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> confidence, it must be relied upon without seeking corroboration of her statement in material particulars. If for some reason the court finds it difficult to place implicit reliance on her testimony, it may look for evidence, which may lend assurance to her testimony, short of corroboration required in the case of an accomplice. The testimony of the prosecutrix must be appreciated in the background of the entire case and the trial court must be alive to its responsibility and be sensitive while dealing with cases involving sexual molestations....."

14. In the matter of **Vimal Suresh Kamble Versus Chaluverapinakeapal S.P. and another** reported in **(2003) 3 Supreme Court Cases 175** the Hon'ble Apex Court held that:

> "Conviction on the basis of the sole testimony of the prosecutrix is permissible provided the evidence of the prosecutrix inspires confidence and appears to be natural and truthful.

Similar view has been taken by the Hon'ble Apex Court in the matter of **State of Chhattisgarh v. Lekhram** reported in **2006 Cri.L.J. 2139 (Supreme Court)**.

15. Therefore, while appreciating the evidence of the prosecutrix, if the evidence of prosecutrix inspires confidence and judicial conscience of the Court and there is nothing on record which goes to show that on account of some animosity or at the behest of some other person in order to wreck the vengeance against the accused a false case has been foisted on the accused, the Court must record conviction on the sole testimony of the prosecutrix. The crime in question was committed in the midnight and in the evidence of the prosecutrix (PW-3) and her daughter 'S' PW-4 it has come in evidence that the accused persons entered the house forcibly in the midnight, accused Vinay Singh was having country made revolver with him, in the first instance, he attacked

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husband of the prosecutrix and thereafter, the prosecutrix and after putting them in fear at the point of revolver, rape was committed on the prosecutrix, which is clear from the evidence of prosecutrix and her daughter 'S' PW-4. The prosecutrix and her daughter have stated that on account of fear no hue & cry was raised, therefore, there was no occasion for neighbourer to notice the crime, moreover, it was midnight when a person is supposed to be in sound sleep, therefore, if no person has come forwarded, the prosecutrix cannot be blamed for that. It is also common knowledge that normally a common man does not come forward when a crime is being committed without having interest in the victim. As such, we do not find any substance in the argument advanced learned counsel for the accused/appellants that no independent witness has been examined. In the cross-examination of the prosecution witnesses nothing has been suggested or elicited by the defence that a false case has been foisted on them by the prosecutrix because of any animosity against them or in order to wreck vengeance against them. As has been mentioned earlier that in the Indian society women normally, even if the offence was committed against them, they are not coming forward to report the matter, therefore, why a woman without any rhyme or reason foist a false against a person that too at the cost of her reputation and reputation of her family members'. Even the evidence of prosecutrix and her daughter stands corroborated by the medical evidence of Dr. J.K. Jain (PW-1), who examined the injuries of husband of prosecutrix, has stated that as per his medical report Ex.P-1 there was one lacerated wound on the left parietal region of the scalp, one contusion on the upper part of left arm and one contusion on the posterior aspect of the middle part & lower part of the right side of chest. Similarly, PW-2 Dr.(Smt.) Pratibha Rajul Jain, who examined the prosecutrix and prepared the medical report Ex.P-2, has categorically stated in her evidence that there was an abrasion mark on the left eyebrow on outer side of eyebrow in the size of 1cm x 0.5cm. 3-4 small abrasions

were present on the left cheek in the size of 0.2 cm x0.1cm, another abrasion over right side of neck and over right side of the chest in the size of ½cm to 3 cm. Therefore, these injuries on the body of the prosecutrix and her husband corroborates the evidence of prosecutrix that there was physical violence with them by the accused persons.

16. As far as the point argued by learned counsel for the accused/appellants that the prosecutrix and her daughters are women of easy virtue is concerned, in the first instance, in the cross examination the prosecutrix has categorically stated that her husband Ramsevak, from whom she has three daughters, remained with him for 13 years. She could not continue with Ramsevak because he had developed relations with some other lady and he brought that lady. She has not deserted him. It is true that 'S' PW-4 herself admitted in the evidence that once she left the house with one Rajkumar for 3-4 days, but from this incident it cannot be said that the prosecutrix and her daughters were the female of easy virtue and merely on this ground the testimony of the witnesses cannot be disbelieved, also for the reasons, as mentioned earlier, that the defence has not been able to elicit in the cross examination that a false case has been foisted upon them and worse to worst a woman of easy virtue has also a right to protect her person and her evidence cannot be discarded and has to be cautiously appreciated. In the matter of **State of Maharashtra and another Versus Madhukar Narayan Mardikar** reported in **(1991) 1 Supreme Court Cases 57**, in Para-8 the Hon'ble Apex Court held that:

> "…. Even a woman of easy virtue is entitled to privacy and no one can invade her privacy as and when he likes. So also it is not open to any and every person to violate her person as and when he wishes. She is entitled to protect her person if there is an attempt to violate it against her wish. She is equally entitled to protection of law. Therefore, merely because she

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> is a woman of easy virtue, her evidence cannot be thrown overboard. At the most the office called upon to evaluate her evidence would be required to administer caution unto himself before accepting her evidence...."

Therefore, there is no reason before us to disbelieve the evidence of the prosecutrix and her daughter 'S' PW-4.

17. As far as the argument of learned counsel for accused/appellants to the effect that no injury on the body of prosecutrix was found, whereas, the rape is said to have been committed on the floor, is concerned, in the first instance, as per medical report (Ex.P-2) injury on the cheek of prosecutrix on account of bite by accused Anil Mishra was already noticed by the doctor and one injury on the chest was also noticed by the doctor. Another injury on account of assault on her left eyebrow was also noticed. However, injuries on the other parts of body is concerned, there is nothing in the cross examination that the surface on which rape was committed was rough or some other particles of hard surface were there without which it cannot be held that on account of injuries not found on the other parts of the body create a doubt in the evidence of the prosecutrix. As has come in the evidence that the accused/ appellants first assaulted the prosecutrix and thereafter on the point of country made revolver committed rape on her, therefore, there is no question of injuries to be found on the body of the prosecutrix.

18. During the arguments learned counsel for the accused/appellants tried to impress upon the Court that there are certain contradictions between the police statement, court evidence and in the evidence of prosecutrix and her daughter 'S' PW-4, we have also noticed these contradictions, but the same are insignificant discrepancies, which in normal course occurs in the natural evidence. These discrepancies are not of such a nature,

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which creates doubt about the happening of the incident looking to the totality of circumstances and evidence available on record.

19. Therefore, from the evidence available on record it is established that the accused/appellants entered the house of prosecutrix forcibly in order to commit gang rape on her, which is punishable for imprisonment for life, therefore, they have been rightly convicted under Section 450 of IPC. Similarly, the accused/appellants entered the house with a common intention to commit rape on the prosecutrix and in furtherance of common intention accused Anil Mishra committed rape on the prosecutrix and at that time accused Vinay Singh was sitting in the room with other family members and was threatening them. Thereafter, accused Vinay Singh committed rape on the daughter 'V' of prosecutrix. As such, they have been rightly convicted for commission of offence under Section 376(2)(g) of the IPC. A country made revolver was recovered at the instance of accused Vinay Singh and there was no valid license for possession of that arm with him, therefore, he has also been rightly convicted under Section 25(1-a)(b) of the Indian Arms Act. Therefore, we do not find any illegality or infirmity in the conviction of the accused/ appellants for commission of offences under Sections 450, 376(2)(g) of IPC & Section 25(1-a)(b) of the Indian Arms Act.

20. Learned counsel for the accused/appellants argued that at the time of commission of crime accused Anil Mishra was student and accused Vinay Singh was working as Driver, there is nothing on record that they are habitual in committing such offence and they are in detention since 18.8.1995, thereby they are in detention for more than 11 years, as such they be released for the sentence already undergone and for that purpose learned counsel for the accused/appellants relied upon the decision of Jharkhand High Court reported in **2004 Cri. L.J. 3375** between **Sangi Hambram and others Versus State of Bihar (now Jharkhand)** in which five accused persons committed rape twice when the prosecutrix was sleeping in her house. Accused entered

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and ravished the prosecutrix in such a manner that she was unable to wear her clothes and walk. The Court considering that the accused persons are in age group of 22-29 years and there was nothing on record to show that they committed similar type of gang rape, they were let off for the sentence already undergone about 11 years. Learned counsel also relied upon the judgment of Hon'ble Apex Court in the matter of State of C.G. Vs. Lekhram (supra) in which rape was committed on the minor girl and sentence was reduced to 1½ years already undergone.

21. In this case also at the time of commission of crime accused Anil Mishra was aged about 25 years and accused Vinay Singh was also aged about 25 years and there is nothing on record to show that they are in the habit of committing such type of offence. They are in custody for last more than 11 years, therefore, we are of the considered opinion that the ends of justice would meet if they are released for the sentence already undergone.

22. In the result, the appeals of accused/appellants ~~are~~ partly succeed while maintaining their conviction under Sections 450 & 376 (2)(g) of IPC and also maintaining the conviction of accused-Vinay Singh under Section 25(1-a)(b) of the Indian Arms Act. The sentence for life imprisonment imposed on the accused/appellants under Section 376 (2)(g) is reduced to sentence already undergone i.e. 11 years and 29 days. The sentence imposed on the accused/appellants in Sessions Trial No.419/95, which has been reduced to already undergone sentence i.e. more than 11 years in Criminal Appeal Nos.558/98 & 779/98 are directed to run concurrently with the sentence imposed in the Sessions Trial No.418/95, which has been reduced in these appeals. The accused/appellants be set at liberty forthwith, if not required in any other case.

Sd/-
L.C.BHADOO
Judge

15-9-2006

Sd/-
V.K. Shrivatava
Judge